

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

**AMERICAN RED CROSS BLOOD SERVICES,
NORTHERN OHIO REGION¹**

Employer

and

Case No. 8-RC-15906

**DISTRICT 1199, THE HEALTH CARE AND
SOCIAL SERVICE UNION, SEIU, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

¹ The Employer's name appears as amended at hearing.

² The Employer filed a post-hearing brief in this matter. I have carefully considered the arguments made therein, as well as the arguments of each party as presented during the hearing.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees in the following classifications: collection specialist II, collection specialist I, collection II, stock inventory assistant I, mobile unit supply clerks, administrative assistant II, volunteer recruitment representatives, donor recruitment representatives, clerical assistant II, Bromed equipment tech, scheduler, administrative assistant III, telerecruiters, project leaders, sr. recruitment representatives, donor recruitment representatives, customer service representatives, hospital services couriers, hospital services techs, clerical assistant, administrative assistant, technical assistant, lab techs, reference lab techs, buyer/administrative assistant, records management specialist, program coordinators, program recruiters, senior network specialist, computer operator, communication specialist, records management specialist, lab techs I, donor counselors II, clerical assistants II, quality systems specialists, donor counselor I, employed through the Employer's office at 3747 Euclid Avenue, Cleveland, Ohio; but excluding all operators supervisors, MU/dock supervisors, team supervisors, senior recruitment representatives, collections manager, operations specialists, volunteer service supervisor, donor recruitment manager, donor service supervisors, production planner, hospital services supervisors, managers, lab tech II, lab supervisors, human resource associates, accountant I, administrative executive assistants, regional account managers, medical director C.E.O, C.O.O., fellowship, donor/health/records specialist, quality systems supervisors, donor suitability/Q.S.S. coordinator, education coordinators, information systems consultant, business office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Employer (Blood Services) is a blood bank affiliated with the American National Red Cross, a federally chartered corporation, with its principal location at 3747 Euclid Avenue, Cleveland, Ohio, and other satellite facilities situated in Northern Ohio. Annually, it collects, processes and provides blood related services and blood products, (including apheresis, bone

marrow programs, and therapeutic phlebotomies), valued in excess of \$50,000 to acute care facilities in Cuyahoga county (including the Cleveland Clinic and University Hospitals) and 19 other counties in Northern Ohio.³ It also annually receives gross revenues in excess of \$500,000. There are approximately 242 employees in the unit found appropriate herein.

The Employer, contrary to the Petitioner, contends that the 43 individuals occupying the position of collection specialist II, with “charge” responsibility, are supervisors as defined in the Act. Moreover, the Employer asserts that the two individuals occupying the position of mobile unit supervisor or dock supervisors (herein dock supervisors) are also supervisors within the meaning of Section 2(11). In the alternative, the Employer asserts that the dock supervisors do not share a sufficient community of interest with other unit employees as to warrant their inclusion in the unit. The Petitioner would include both dock supervisors in the unit. The remainder of the unit found appropriate herein, reflects a record stipulation between the parties regarding which classifications should be included or excluded. I approve that stipulation since there is no record evidence to the contrary.

³ The parties stipulated at the hearing that the Employer is a health care facility as defined in Section 2(14) of the Act. A health care institution is defined in Section 2(14) of the Act as “any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm or aged persons.” The Board has divided blood banks into two categories: the blood banks that are health care institutions and those that are not.

The determining factor in finding a blood bank to be a health care institution is whether the blood bank is engaged on a regular basis in patient pheresis and therapeutic phlebotomies, therapies which both involve patient care. **Syracuse Region Blood Center, 302 NLRB 72 (1991)**. Record evidence and my decision in 8-RC-14813 amply reflects that the Employer in the instant matter meets the patient pheresis and therapeutic phlebotomy criteria set forth in **Syracuse**, supra. As a result, and in accordance with a stipulation of the parties, the record evidence and applicable law, I find that the Employer is a health care institution engaged in patient care within the meaning of Section 2(14) of the Act.

1. FACTS

John Edward Taylor is the Employer's chief operating officer. His testimony indicates that blood collection activities cover 20 counties in Northern Ohio and involve a total of 400 employees. Taylor testified that besides the headquarters building in Cleveland the Employer operates three fixed sites, in Parma, Fairlawn and Austintown.

Taylor's testimony indicates that Petitioner currently represents the 23 mobile unit assistants (MUA) who drive the bloodmobile vehicles. The collection specialist IIs report to the collections operations supervisors.

Dock Supervisors

Carolyn Ann Kean, the Employer's collections manager, testified that Debra Midget and George Dixon are the two persons currently classified as "dock supervisors."

Kean testified that Dixon and Midget oversee the daily dispatch of the mobile units, in addition to checking for the adequacy of supplies and equipment on each unit. Dixon and Midget also supervise the MUAs during the loading and unloading of the mobile units. According to Kean's testimony, both dock supervisors have the authority to discipline employees. Dixon and Midget share an office located in the dock area. Although Dixon and Midget can do bargaining unit work, Kean testified that they usually do not perform such tasks. Chuck Hrestak, the mobile unit assistant/dock supervisor, is the person to whom both Dixon and Midget both report. Hrestak occupies an office separate from the one utilized by Dixon and Midget. The dock supervisors, Dixon and Midget, rotate shifts, Monday through Friday. The two shifts are 7:00 a.m. to 3:00 p.m. and 3:00 p.m. to 11:00 p.m., according to Kean's testimony.

Kean's testimony indicates that they may go out with mobile units two to three times a week. Also, Dixon and Midget provide input to their supervisor during his evaluation of other

employees. Because Chuck Hrestak works from 9:00 a.m. to 5:00 p.m., Monday through Friday, either Dixon or Midget is the only supervisor over the MUAs on the later part of the second shift. This is especially true when blood drivers extend past 5:00 p.m., as Kean's testimony suggests is a regular occurrence. Kean's record testimony establishes that Dixon and Midget's supervisory authority is limited to the MUAs, whom the Petitioner already represents.

Collective Specialist IIs

According to Kean's testimony, there are usually four or five employees assigned to a mobile unit. A driver and charge person would increase that total to six or seven per unit. Kean's testimony also indicates that a collection specialist II (herein CSII) with charge responsibility works four days a week in a charge capacity and one day a week as a worker "on line" processing blood donors who present themselves. All the personnel on a mobile unit wear "scrub" type uniforms, although they can choose one of several approved colors. The charge CSII enforces the dress code, according to Kean.

CSIIIs were formerly classified as "head nurse" or "assistant head nurse." I note that in Case No. 8-RC-14813, these same parties stipulated that head nurses should be excluded from the unit found appropriate in that case. I approved that stipulation as there was no record evidence to the contrary. That stipulation is, of course, not binding upon me in determining the supervisory status of the CSIIIs in the instant matter pursuant to the Board's longstanding policy. See **Mid-West Abrasive Co., 145 NLRB 1668 (1964)**. Accordingly, I will consider the issue of CSIIIs de novo based on the record evidence herein.

Kean testified that there are 13 team supervisors, including the four mobile team supervisors who work at the "fixed sites." There are approximately 140 total employees working on the mobile units, according to Kean, with an average of 90 employees scheduled to

work each day. The CSII employees with “charge” responsibility do not have the authority to hire or fire other employees. They also wear the same uniforms as the other employees on the mobile units.

Team supervisors, however, have the option of wearing street clothes, and they are salaried, as opposed to the hourly CSII personnel. Both team supervisors and charge personnel have the same benefit package, according to Kean’s testimony. Importantly, Kean testified that team supervisors are responsible for the annual education of all the team members. They may seek input from the charge staff, but the CSII charge persons do not actually evaluate other employees.

The Employer has an informal grievance procedure, according to Kean. Grievances are first presented to a team supervisor, then to the department manager, and finally to the Human Resource office. Kean’s testimony establishes that CSIIIs do not attend the monthly supervisory meetings. Kean also indicated, at the hearing, that discipline of employees is never an issue at the “charge” meetings which are held two or three times a year. Finally, the record shows that CSIIIs with “charge” responsibilities are given at least a 25 cent per hour wage increase.

Significantly, Kean’s testimony shows that mobile unit supervisors, the MUA dock supervisors and the operations supervisor all carry a pager so they can be consulted when they are off duty. Accordingly, the mobile units can easily contact supervision.

Kathleen Jean Valent, the Employer’s operations supervisor, testified that following standard procedure, charge staff can send employees home early if it is a slow day, i.e., if too few potential blood donors are presenting themselves each hour. The charge staff CSIIIs sign the time cards for mobile unit employees. In the event that an employee forgets or misses their lunch, the CSII is pre-authorized to grant an additional 30 minutes of pay, according to Kean.

Kean also testified that “true” discipline begins with a written warning. The first stage is called “the discussion.” The second stage is called a “verbal counseling.” The third stage is a written warning. Either another written warning or a suspension constitutes the fourth stage. The fifth and final stage is termination. According to Kean, the Employer’s witness, team supervisors administer the first through the fourth steps. Kean herself is responsible for terminating employees.

Although Kean testified that independent judgment is used by the CSII charges, it appears that the assignment of tasks is partly dictated by an employee’s qualifications, and partly a matter of rotating employees from one repetitious task to another. Moreover, Kean’s testimony indicated that 70 percent of a charge person’s day is spend processing blood donors. Ordinarily, 24 blood collection operations are conducted each day. Kean testified that ideally a CSII charge would work “hands on” only 20 percent of the time, but her testimony, noted above, shows that this ideal rarely is achieved.

Petitioner presented two witnesses at the hearing. Linda Ladd, a charge CSII, testified that she received a 25 percent raise when she became a “charge.” Ladd attends the “charge” meetings, but not supervisory meetings. According to Ladd, she received three days of classroom training and ten days on a mobile unit with a mentor, to qualify as a “charge.” Ida McGhee, a non-charge CSII, with six and one-half years experience, testified that her team supervisor, Lynette Consunak, is the individual who approves requests for funeral leave and changes in the schedule.

2. ANALYSIS

Section 2(11) of the Act defines “supervisor” as follows:

“any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

In a representational proceeding such as this, the burden of proving that individuals are supervisors rests on the party alleging that supervisory status exists. **Bennett Industries, Inc., 313 NLRB 1363 (1994); Ohio Masonic Home, Inc., 295 NLRB 390 (1989); Tuscon Gas & Electric Co., 241 NLRB 181 (1979).**

In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are “vested with genuine management prerogatives” and lead persons who are protected by the Act even though they perform “minor supervisory duties.” **Providence Hospital, 320 NLRB 717, 725 (1996).**

In each case presenting a supervisory issue, the Board must “differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestion, and between the appearance of supervision and supervision in fact.” **Ibid.** at 725.

In applying the traditional criteria for the establishment of supervisory status to the facts of the instant case, I find that the charge CSIIIs are not supervisors within the meaning of Section 2(11) of the Act, and I will include all of the CSIIIs in the unit found appropriate herein. These individuals possess no authority to hire, discharge, or discipline other employees. Their small wage differential is commensurate with the leadperson position which they occupy.

Both the Board and the courts have recognized that not every act of assignment, even of employees as opposed to job tasks, constitutes statutory supervisory authority. **Providence Hospital**, *supra*, at p. 727. Assignment must be done with independent judgment before the Board will consider it supervisory under Section 2(11). Therefore, routine or clerical assignments are not supervisory; but those requiring the exercise of independent judgment are. Accordingly, work assignments made to equalize employees' work on a rotational basis are routine assignments. *Ibid.* Assignments based on assessment of employees' skills when the difference in skills are well known, have been found routine. *Ibid.*

In this case I conclude that whatever authority the charge CSII's have to "assign" other staff members, whether it be the assignment of employees or the assignment of tasks, is not the type of authority that requires the use of independent judgment within the meaning of Section 2(11).

Likewise, the fact that a charge CSII may send employees to another location when there own unit is overstaffed due to a low turnout of donors, does not establish that this authority is anything more than a routine clerical task. Employees are released early only if there is no need for them elsewhere in the system of mobile units. The weekly staffing schedules are not prepared by the charge CSII's, but at the headquarters. Accordingly, I find that the limited authority the charge CSII's possess to "transfer" other staff members is not the kind of authority that entails the exercise of independent judgment within the meaning of Section 2(11). Furthermore, if they were supervisors, there would be a total of 56 supervisors over a group of approximately 90 employees. Including the entire CSII classification in the unit produces a more traditional ratio of 13 team supervisors for approximately 133 employees, a ratio of one to ten rather than one to two. See **Northcrest Nursing Home**, 313 NLRB 491, 498 (1993).

In sum, charge CSIIIs serve as a classic example of team leaders responsible for coordinating the team's work. Statutory supervisory authority is not shown by the limited authority of a charge CSII to assign job tasks or transfer employees from an overstaffed unit to an understaffed one.

Uncontroverted record testimony indicates that both dock supervisors, Dixon and Midget, have the authority to discipline any of the 23 MUAs. Because their supervisor, Hrestak is not present for most of the second shift, and because Dixon and Midge rotate shifts, they alone supervise most of the second shift. Section 2(11) of the Act is to be interpreted in the disjunctive and the "possession of any one of the authorities listed [in that section] places the employee invested with this authority in the supervisory class." **Ohio Power Co. v. NLRB**, 178 F.2d 385, 387, (6th Cir. 1949), cert. denied 338 U.S. 899 (1949); **Matheson Fast Freight**, 297 NLRB 63 (1989). Based on the foregoing facts and law I find that the dock supervisors, Dixon and Midget, are supervisors within the meaning of Section 2(11) of the Act and I shall exclude them from the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the

United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **District 1199, The Health Care and Social Service Union, SEIU, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969).** Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994).** The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by **August 24, 1999**.

Dated at Cleveland, Ohio this 10th day of August 1999.

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

177-8520-0100